REMARKS

<u>Rejection of claims 1-22 under 35 U.S.C. §102(e)</u>

The Examiner rejected claims 1-22 under 35 U.S.C. §102(e) as being anticipated by Duimovich et al. (Duimovich) US Pub. No. 2002/0052947. Applicant traverses the Examiner's finding of anticipation of the claims.

In the rejection, the Examiner states that Duimovich teaches the performance data access mechanism recited in claim 5, citing page 3, paragraphs 0039-0041 of Duimovich. Applicant respectfully asserts that Duimovich does not teach or suggest the performance data access mechanism specified in claim 5.

Claim 5 includes the following limitation:

> . . . a performance data access mechanism that allows access to the performance data by a user of the second computer system only if the performance data transmission mechanism is enabled.

The cited portion of Duimovich describes a client application that collects web browser-based performance data. The performance data is transmitted in the form of a page summary by placing it in a shared memory segment. There is no discussion in the cited text concerning the data access mechanism allowing access to performance data by a user of the computer system only if the performance data transmission mechanism is enabled. This claimed feature allows the supplier of software or hardware to control the access to performance data by a user only if the user is willing to share the performance data. The art cited by the Examiner does not teach or suggest this interaction of the performance data access mechanism and the performance data transmission mechanism.

A telephone interview and e-mails to the Examiner resulted in the Examiner revealing the mapping of claim elements to the cited art. It was then first discovered by the Applicant that the Examiner maps the claim element "allows access to the performance data by a user of the second computer system only if the performance data transmission mechanism is enabled" to the communication between the agent and server that permits configuration of agent's configuration information. This most important part of the Examiner's rejection is not at all evident from the first office action and was not clearly stated in the second office action. The failure to indicate the basis for rejection has unfairly prejudiced the Applicant's ability to respond to the rejection. Applicant therefore requests a non-final office action or an allowance of the claims in response to this request for reconsideration.

Discussion with the Examiner determined that the Examiner's makes the following associations between the claim elements and the cited art. The claim limitation of "user" is mapped to the user site 50. The claim limitation of client application maps to the performance data collection mechanism (Page 3, para. 39). The communication between the agent and server that permits configuration of agent's configuration information maps to the performance data access mechanism (Page 6, para. 66). The communication network maps to the performance data transmission mechanism.

The Examiner's interpretation of the claims and mapping to the cited art lacks a teaching or suggestion for the claim element of allowing "access to the performance data by a user of the second computer system only if the performance data transmission mechanism is enabled." To obviate the claims, the Examiner's mapping of the claim elements would require the cited art to teach access to the performance data by a user site only if the client application is properly configured. There is no such teaching.

In fact the Examiner's interpretation and reading of the claims on the cited art does not make sense with respect to the teaching of Duimovich. The client application 70

collects the performance data. The client application is part of the user site that the Examiner has mapped to the user claim element. There is no teaching in the cited art that any configuration of the client application would prevent the user site from having access to the performance data. In fact, it is the user site, through the client application, that is obtaining the performance data. The user site is never not privy to the performance data that it collects.

The Examiner's interpretation of the cited art would have limited access to performance data in the opposite direction compared to the direction of limited access described in the claims. If the client application were configured to not obtain the performance data as suggested by the Examiner, then it would be the server that would not have access to the data, not the user site that is collecting the performance data. The claims require the conditional access to the performance data by the user (user site). Therefore the cited art does not teach or suggest the claims and reconsideration of the rejection is respectfully requested.

Each of the other independent claims, namely claims 1, 8, 9, 10, 11, 12, 15 and 19, were similarly rejected by the Examiner on the same rational without further arguments. Each of the independent claims recite a similar limitation for a performance data access mechanism. However, in some claims, this limitation is in the form of steps that are performed. Applicants believe the cited art does not show the features of the claimed invention in these independent claims. The Examiner's rejection of these claims suffers from the same lack of anticipation for claim 5. The Applicants respectfully request the Examiner to reconsider the rejection and allow the claims to issue.
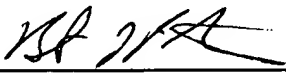
In addition, each of claims 2-4, 6-7, 13-14, 16-18 and 20-22 depend on one of the independent claims that are allowable for the reasons given above. As a result, claims 2-4, 6-7, 13-14, 16-18 and 20-22 are allowable as depending on allowable independent

claims. Applicant respectfully requests reconsideration of the Examiner's rejection of claims 1-22 under 35 U.S.C. §102(e).

Conclusion

In summary, Duimovich does not teach, support, or suggest the unique combination of features in applicants' claims presently on file. Therefore, applicants respectfully assert that all of applicants' claims are allowable. Such allowance at an early date is respectfully requested. The Examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

By _____

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